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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,705	12/10/2001	Eiji Ujyo	1095.1205	3637
21171	7590	03/21/2006	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			BENGZON, GREG C	
			ART UNIT	PAPER NUMBER
			2144	

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/006,705

Applicant(s)

UJYO ET AL.

Examiner

Greg Bengzon

Art Unit

2144

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-3, 6-8 and 13-15.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached sheets.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) \_\_\_\_\_.

13. ☐ Other: \_\_\_\_\_.

WILLIAM C. VAUGHN, JR.  
PRIMARY EXAMINER

***Response to Arguments***

Applicant's arguments filed 02/23/2006 have been fully considered but they are not persuasive.

The proposed After Final amendments will not be entered, as the amendments to Claim 1 regarding '*controlling at least one computer to perform...*' changes the scope of the Claims and require a new search.

The Applicant presents the following argument(s) [*in italics*]:

*Claim 1 recites: "determining a number of times greater than one that each of the groups should be transmitted repetitively before the delivery destinations respond to delivery" (claim 1, lines 5-6). The Office Action ignored this limitation; nothing was cited or found in Gemmell that teaches or suggests the determining limitation of claim 1.*

The Examiner respectfully disagrees with the Applicant. The Office Action did not ignore said limitation. Rather, the Office Action addressed this Claim 1 limitation as part of Claim 14, pointing to Column 7 Lines 25-30. In said citation, Gemmell disclosed a data carousel scheme wherein the sender loop continuously either ad infinitum, or until a certain [pre-determined] condition is met.

The Applicant presents the following argument(s) [*in italics*]:

*'...the Office Action failed to establish a case of prima facie obviousness in regard to the stated grounds of rejection because in the discussion of the rejection of claim 1 there was no mention of the Chiu reference.'*

The Examiner notes that Claim 13 has substantially the same limitations as Claim 1. Claims 1 and 13 are rejected on the same basis.

With respect to Claim 1, Gemmell and Chiu have several overlapping disclosures regarding IP multicasting and repetitive transmission [re-transmission] of multicasting packets (Gemmell – Column 7 Lines 25, Chiu-Column 16 Lines 30-35). Gemmell disclosed improvements which increase the efficiency and usefulness of the multicast file distribution (Gemmell-Column 4 Lines 30-35) and thus would have been motivated to look for other disclosures that deal with improving multicasting techniques, such as Chiu. At the time of the invention it would have been obvious to combine Chiu into Gemmell in order to allow the system of Gemmell to establish reliable multicasting which does not cause congestion (Chiu-Column 2 Lines 50-55) and thereby improves efficiency.

The Applicant presents the following argument(s) *[in italics]*:

*'an average data transmission speed is calculated, not "a total response processing time"'*

The Examiner notes that in the cited portion of Chiu, Chiu allows the system to *'specify ...the duration within which the transfer has to take place'*, said duration being the equivalent of *'total response processing time'*. Furthermore, in order to calculate the average data transmission speed, it would have been necessary to calculate the total response processing time.

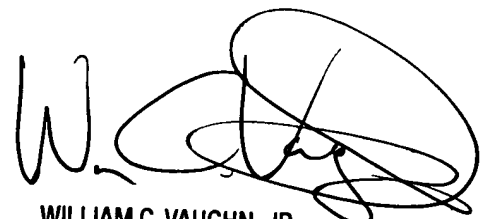
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Bengzon whose telephone number is (571) 272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571)272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gcb



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PRIMARY EXAMINER